IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.7669 of 2006

Shri K. Narayan Hegde Petitioner
Vs.
M/s.Sai Balaji Builders & Developers Respondents

Mr.P.M.Pradhan i/b. Mr.M.S.Karnik for petitioner.
Mr.R.S.Datar for resp.nos.1 to 3.

CORAM: B.H.MARLAPALLE,J.

March 22, 2007.

P.C.

. Heard Mr.Pradhan with Mr.Karnik, the learned counsel for the petitioner and Mr.Datar, the learned counsel for the respondents. In R.C.S. No.209 of 2006 the plaintiff submitted an application at Exhibit 30 and prayed for an order of injunction prohibiting the defendant from carrying out any construction in the proposed new building over the suit premises until the tenancy rights and claim of the plaintiff was settled. This application was rejected by the learned Jt. Civil Judge, Junior Division at Kalyan on 28/7/2006 after hearing both the parties. The plaintiff, therefore, filed Misc. Civil Appeal No.64 of 2006 challenging the rejection of application at Exhibit 30 and the said appeal also has been dismissed by the learned Addl. District Judge at Kalyan on 29/9/2006. Hence this petition.

. During the course of arguments Mr.Pradhan has invited my attention to the affidavit of Shri Rajendra Shankar Palve, an Advocate and purported to have been filed by him before the trial Court in Regular Civil Suit No.209 of 2006. It was, therefore, submitted by Mr.Pradhan that there is an agreement signed between the parties as per which the defendant has agreed to provide one flat admeasuring 1000 sq. ft. built up area on the first floor in the proposed new building for a total cost of Rs.6,65,000/-. He, therefore, prayed for appropriate order of protection in respect of the flat proposed and agreed to be allotted / provided to the plaintiff. Such a prayer was admittedly not made before any of the Courts below and what was prayed for was a blanket stay on the construction of the proposed new building.

. The view taken by both the Courts below turning down the prayer for blanket stay cannot be termed as perverse or illegal and, therefore, no interference is called for in the order rejecting the application at Exhibit 30. Hence the petition is rejected. However, this order will not come in the

way of the plaintiff to move a fresh application praying for interim relief limited to the proposed flat admeasuring 1000 sq.ft. on the basis of the agreement between the parties.

(B.H